

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2000-95

February 7, 2001

MAINE PUBLIC UTILITIES COMMISSION
Summary Investigation Into Accident
In Industry, Maine on December 12, 1999

ORDER

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

In this Order we close our summary investigation.

II. BACKGROUND

On May 11, 2000, we issued an Interim Order in this docket, in which we accepted our staff's recommendation concerning eight issues it examined in connection with a fatal accident involving a Central Maine Power Company (CMP) line worker in December 1999. The staff examined whether CMP's procedures conformed with the National Electrical Safety Code (NESC), as required by 35-A M.R.S.A. § 2305-A(2), and CMP's implementation of its own safety rules and procedures. The staff made six recommendations for further CMP action (as summarized below):

1. CMP should conduct a review of all work safety instructions, policies and other work requirements to ensure they comply with NESC requirements and conduct a similar review each time the NESC is updated;
2. CMP should reexamine its requirements for tagging lines deenergized for maintenance to ensure they have the desired effect on worker safety;
3. CMP should reexamine its work rules to ensure that all practices related to verifying that circuits or equipment are deenergized reflect safe and reliable techniques;
4. CMP should review all work rules to ensure that NESC requirements related to verbal communications between employees are incorporated into applicable rules and conduct refresher training for all employees;
5. CMP should update its safety instructions with the new procedures agreed to with the union representing line workers (IBEW Local 1837) on February 24, 2000, and incorporate them into employee training programs; and
6. CMP should explain in detail why it agreed to a work/rest policy requiring seven hours of rest after every 17 hours of work (17/7) with its union rather

than 16/8 as recommended to CMP by the federal Occupational Safety and Health Administration (OSHA).

We accepted the recommendations and directed CMP to report back on implementing Recommendations 1 – 4 and to notify the Commission when it had implemented the new work rules and policies in Recommendation 5. We also asked CMP to provide additional support for why it believes the 17/7 work/rest policy is satisfactory from a safety perspective. Interim Order at 5. CMP responded to this Order on June 29, 2000. On July 18, 2000, the Commissioners and staff met with relatives of the deceased line worker to hear their concerns about the accident. The staff requested additional follow-up information from CMP on August 4, 2000, which CMP filed on September 6. The staff sought additional clarifying information at a meeting with CMP representatives on November 30, 2000 and CMP filed additional written information on December 22, 2000.

III. DISCUSSION AND DECISION

A. CMP's Additional Responses

CMP has responded to the recommendations contained in the Interim Order and additional questions as follows.

Recommendation 1. Review all policies for compliance with NESC. Our Staff found that although CMP regularly reviewed its safety program based on OSHA's requirements, it had not consistently reviewed its practices for compliance with NESC. Although similar, NESC requirements are not identical to OSHA's. On June 29, 2000, CMP reported it had completed its review and found its procedures and policies were in compliance with both NESC and OSHA rules and standards. CMP has agreed to conduct such reviews annually.

Recommendation 2. Reexamine tagging rules to ensure safety. Our Staff found CMP's requirements for tagging lines deenergized for maintenance appeared complex and for that reason might not be observed by field staff. On September 6, 2000, CMP reported it had reviewed its Switching and Tagging Procedures and submitted revised procedures that were effective 8/8/00. Revisions were minor. All employees primarily affected have been trained on the procedures since September 2000.

Recommendation 3. Examination of work rules related to deenergizing circuits and equipment. During the December 1999 accident, a CMP employee used a sledgehammer to assist a pole-mounted switch cut out to open. This technique is not reliable. CMP re-examined its work and safety rules in this area. On September 6, 2000, CMP reported that an Ad Hoc Committee had completed reviews and consolidation of switching and tagging training programs, with training of affected

employees in progress. CMP has emphasized to employees that using a sledgehammer or other force is not acceptable work practice.

Recommendation 4. Revise all work rules to ensure that NESC requirements concerning verbal communications have been met and incorporated into training. As part of its Rules for Operation of Electric Supply and Communications Lines and Equipment, the NESC states in Rule 442G:

Repeating Oral Messages

Each employee receiving an oral message concerning the switching of lines and equipment shall immediately repeat it back to the sender and obtain the identity of the sender. Each employee sending such an oral message shall require it to be repeated back by the receiver and secure the latter's identity.

CMP takes the position that the repeating of oral messages when switching lines and equipment is only required between the person in charge of the work and system or area dispatchers and/or station operations. Our staff interprets the rule to apply also to communications between line workers, a factor in the December 1999 accident. To resolve this issue, CMP has agreed to seek an interpretation of the rule from the National Electrical Safety Code Committee. A Committee on Interpretations prepares replies to requests for interpretations of the rules contained in the Code. CMP has agreed to consult with the Commission staff on the interpretation request and to provide us with the Committee's interpretation.

Recommendation 5. Update manuals and train affected staff in new work/rest policy. CMP reported that training materials were completed by June 30, 2000, and all employees trained by September 30, 2000.

Recommendation 6. Provide further support for the 17/7 work/rest policy. We first asked CMP to describe any circumstances where work can exceed 17 hours. CMP explained that ordinarily, line workers perform their work during 8-hour days on a 5 day-per-week rotation. These work hours can be extended to a maximum of 17 hours based on the agreement reached on February 24, 2000 by CMP and its union employees (the so-called 17/7 work/rest schedule).

If a system emergency is declared, however, an employee (except the duty person) may work up to 24 hours during the first part of the emergency. Subsequent hours worked would be limited to 17 hours between rest periods. In no case (except a life or death situation), will the duty person work more than 17 hours in a 24-hour period. The duty person would be replaced after working 17 hours in a 24-hour period. The duty person is on-call for 24-hours for extended periods and therefore, it was agreed that the 17-hour limit would not be exceeded for these employees.

CMP believes the policy of allowing other employees to work 24 hours during the first day of a system emergency is justified by the emergency nature of the event and the fact that line workers do not spend all of their time performing physical labor. The 24-hour period may include time loading the truck, eating meals, riding to the site, waiting while any necessary tree trimming occurs by other crews, and controlling traffic. In other words, the 24 hours will include periods of relatively lower activity levels and exertion. After an initial 24-hour period is worked, the employee must resume the 17 hours on, 7 hours off schedule. The duty person must never exceed the 17-hour limit.

In each Service Center, a person, typically a CMP Safety Specialist, is assigned to track work and rest hours. In non-system emergencies, employees are required to quit work after 17 hours. Any employee exceeding 17 hours is subject to disciplinary action. Line workers must get permission to start jobs after 15 hours on the job so that adjustments can be made for someone else to start or finish the job. All of these work rules apply to any contractors, including employees of other utilities that may be assisting CMP on a "mutual aid" basis.

B. Decision

When investigating accidents pursuant to our authority under 35-A M.R.S.A. § 710, we view the Commission's role as determining whether the utility has complied with applicable national safety codes, OSHA requirements and the utility's own internal standards, including any it has negotiated with its employees. We will rely on OSHA's findings as to whether the utility has complied with OSHA requirements and may conduct our own investigation regarding other standards.¹ In this instance, our staff's review raised questions about CMP's compliance with the NESC and the adequacy of enforcement and training involving both NESC and CMP's internal safety policies.

Having reviewed CMP's responses to these questions, we find it has adequately addressed the six recommendations contained in the Interim Order. The new work/rest policy agreed to by CMP and the union representing line workers provides a new level of protection to workers. The 17-hour workday limit, even in non-storm relief conditions, is a significant change in long-standing practice of no set time limits for work hours. We direct CMP to provide a review of its implementation of the work/rest policy to the Commission by December 31, 2001. The report should include a description of implementation of the new policy and of any modifications to that policy with supporting analyses of any modifications that demonstrate their effect on safety.

With regard to Recommendation 4, we direct CMP to seek an interpretation of Rule 442G within the next 30 days. Specifically, CMP should ask:

¹We rely on OSHA because of its charge to assure worker safety and our limited, independent expertise in this area.

“Is the requirement for repeating oral messages restricted only to communications between the person in charge of the work on the one hand, and dispatchers, station or substation operators on the other hand, or does that requirement apply to communications between members of transmission and distribution line crews as well?” CMP should submit a draft of its request to the staff prior to submission for its review. CMP should also file a copy of any further communications with NESC on this subject. Depending on NESC’s response, we may seek further comments and impose requirements beyond the NESC, pursuant to our authority under 35-A M.R.S.A. § 2305-A(5).

Accordingly, we

O R D E R

That this summary investigation is closed.

Dated at Augusta, Maine, this 7th day of February, 2001.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Nugent
 Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Civil Procedure, Rule 73, et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.